



IN 09/884,795

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#9  
JB  
PATENT  
10/31/02

Applicant: SCHERER ET AL. Examiner: J. LEE  
Serial No.: 09/884,795 Group Art Unit: 3673  
Filed: JUNE 19, 2001 Docket No.: 3616.177USI2  
Title: BLOCK SPLITTING ASSEMBLY AND METHOD

CERTIFICATE UNDER 37 CFR 1.10:

"Express Mail" mailing label number: EV168362337US

Date of Deposit: October 24, 2002

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to Commissioner for Patents, Washington, D.C. 20231.

By: 

Name: John Junkers

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT (37 C.F.R. § 1.97(b))

Commissioner for Patents  
Washington, D.C. 20231

**RECEIVED**

OCT 30 2002

Dear Sir:

**GROUP 3600**

With regard to the above-identified application, the items of information listed on the enclosed Form 1449 are brought to the attention of the Examiner.

This statement should be considered because it is submitted before the mailing date of a first Office Action on the merits. Accordingly, no fee is due for consideration of the items listed on the enclosed Form 1449.

In accordance with 37 C.F.R. § 1.98(a)(2), a copy of each document or other information listed on the enclosed Form 1449 is provided.

No representation is made that a reference is "prior art" within the meaning of 35 U.S.C. §§ 102 and 103 and Applicants reserve the right, pursuant to 37 C.F.R. § 1.131 or otherwise, to establish that the reference(s) are not "prior art." Moreover, Applicants do not

represent that a reference has been thoroughly reviewed or that any relevance of any portion of a reference is intended.

Items A-M listed on the attached Form 1449 are examples of concrete masonry blocks of which Applicants are aware that have been processed to eliminate the regular, sharp edges on their front faces in order to make the blocks look more natural. One known process for eliminating the regular, sharp edges on concrete blocks is the process known as tumbling in which a relatively large number of blocks are loaded into a drum which is rotated around a generally horizontal axis. During tumbling, contact between the blocks and with the walls of the drum knock off the sharp edges, and also chips and scars the edges and faces of the blocks. Another known process for eliminating the sharp, regular edges and for distressing the front face of concrete blocks is to use a hammermill-type machine in which rotating hammers or other tools attack the face of the block to chip away pieces of it.

It is possible that a block that has been processed by tumbling or in a hammermill-type machine may by chance achieve a design appearance that is similar to the claimed design. However, accidental results that are not intended and not appreciated do not constitute an anticipation. Eibel Process Co. v. Minnesota & Ontario Paper Co., 261 US 45, 43 S.Ct. 322 (1923). Further, a chance result, without knowing what the result depended on and without being able to reliably produce them does not anticipate an invention. United Chromium, Inc. v. International Silver Co., 60 F.2d 913, 15 USPQ 51 (CA2 Conn., 1932).

The block shown in the print-outs in Item J listed on the accompanying Form 1449 has been in the possession of the assignee since approximately the Spring of 2001.

The blocks shown in the photographs in Items K-M listed on the accompanying Form 1449 were produced to the assignee on March 13, 2002 in pending litigation between the

assignee and Concrete Products of New London, Inc.

The claimed design results from a process that is disclosed in previously cited U.S. Application Serial Nos. 09/330,879 (now U.S. Patent 6,321,740); 09/691,864; and 09/884,795.

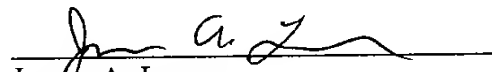
Consideration of the items listed is respectfully requested. Pursuant to the provisions of M.P.E.P. 609, it is requested that the Examiner return a copy of the attached Form 1449, marked as being considered and initialed by the Examiner, to the undersigned with the next official communication.

Please charge any additional fees or credit any overpayment to Deposit Account No. 13-2725.

Respectfully submitted,

MERCHANT & GOULD P.C.  
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Date: October 24, 2002

  
James A. Larson  
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